

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEFFREY BUCHANAN,

Plaintiff,

v.

COUNTY OF ALAMEDA, WAYNE TUCKER,  
individually and in his capacity as  
Chief Probation Officer for the  
County of Alameda, and TABULA RASA  
TREATMENT HOMES, INC.,

Defendants.

No. C 04-1130 CW

ORDER GRANTING  
DEFENDANTS'  
MOTIONS FOR  
SUMMARY JUDGMENT

Defendant Tabula Rasa Treatment Homes, Inc., (Tabula Rasa) moves for summary judgment in its favor, or in the alternative for summary adjudication of the claims against it. Plaintiff Jeffrey Buchanan opposes the motion. Defendants County of Alameda (the County) and Wayne Tucker also move for summary judgment in their favor, or in the alternative for summary adjudication of the claims against them. Plaintiff opposes the motion with respect to his claims against the County, but does not oppose dismissal of his claims against Defendant Tucker.

The matter was heard on July 8, 2005. Having considered all of the papers filed by the parties and oral argument on the motions, the Court GRANTS Defendants' motions for summary judgment.

## BACKGROUND

This case arises out of Plaintiff's attempted suicide while he resided at a treatment facility for juvenile sex offenders owned and operated by Tabula Rasa. The facts are undisputed and drawn from the contemporaneous records of the State court and the Alameda County Probation Department, unless otherwise noted.

Plaintiff was born in 1985. On October 10, 2001, he was convicted of sexually molesting a step-sibling in violation of California Penal Code § 288.5(a) and placed on probation. At that time, the Alameda County Juvenile Court determined that Plaintiff's continued residence in his family home would be contrary to his welfare, and he was adjudged a ward of the court and committed to the care and custody of the Probation Department.<sup>1</sup> Upon consideration of the Probation Department's report, including the clinical evaluation of a Psychiatric Social Worker, the State court ordered as a probation condition that Plaintiff be placed in a licensed residential sex offender treatment program. On December 11, 2001, Plaintiff was placed in a Tabula Rasa group home, pursuant to a contract executed between Tabula Rasa and the County for his treatment. The State court approved the placement.

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<sup>1</sup>The Court grants Defendant Tabula Rasa's request for judicial notice of the Alameda County Superior Court's two October 10, 2001 Orders placing Plaintiff under the care of the Probation Department and setting forth the terms and conditions of Plaintiff's probation, as well as the Superior Court's September 13, 2002 Ex Parte Order allowing Plaintiff to take Paxil.

1 Tabula Rasa is a private, non-profit organization licensed  
2 by the State of California's Department of Social Services.  
3 Mandery Decl. ¶ 2. It accepts juvenile sex offenders from the  
4 County and other counties in Northern California. Id. ¶ 4. It  
5 does not provide treatment for all of the County's juvenile sex  
6 offenders and may reject any applicant; an individual's  
7 acceptance into the program is "contingent upon a thorough  
8 review of the documents provided by the County concerning the  
9 minor as well as an interview to determine whether they are  
10 suitable for placement into the program." Id. ¶ 3. According  
11 to Michael Cholerton, Director of Juvenile Services for the  
12 Probation Department at the time of Plaintiff's placement,  
13 Tabula Rasa enjoyed a good reputation and a long-term  
14 relationship with the Probation Department. Cholerton Decl. ¶  
15 15.

16 The Probation Department supervises and monitors the  
17 children it sends to Tabula Rasa. However, the Probation  
18 Department does not provide input or recommendations regarding  
19 the day-to-day operation of the group home, nor does it have any  
20 control over treatment plans or therapy. Mandery Decl. ¶ 6.

21 Beginning in December, 2001, Plaintiff's treatment was  
22 supervised by Tabula Rasa employee Kathy Steenberg, a licensed  
23 clinical social worker, and included at least one individual and  
24 one group therapy session per week. Deputy Probation Officer  
25 Heather Rogers became Plaintiff's probation officer in March,  
26 2002, at which point she became aware of his suicidal  
27 tendencies. Rogers Decl. ¶ 8. However, she did not at that

1 time raise the issue with her supervisors or anyone at the  
2 Probation Department, assuming that Tabula Rasa was dealing with  
3 the issue by "making sure he went to his medical appointments,  
4 his psychiatric appointments, by communicating." Rogers Dep.  
5 29:10-21. Every month, Officer Rogers met with Plaintiff and  
6 visited with Tabula Rasa staff. See Rogers Decl., Ex. 2,  
7 Monthly Visit Documentation Forms, March 20, April 25, May 22,  
8 June 29, July 18, August 29, September 16, October 29, November  
9 21 and December 19, 2002; January 23, February 27, March 31 and  
10 April 30, 2003. She also reviewed Tabula Rasa's initial report  
11 and subsequent quarterly reports concerning Plaintiff's  
12 condition, treatment, needs and goals. Id., Ex. 1, January 25,  
13 2002, Appraisal/Needs and Services Plan; Ex. 3, Quarterly  
14 Reports, June 18, 2002, November 11, 2002, and March 4, 2003.<sup>2</sup>  
15 According to Michelle Mandery, executive director of Tabula  
16 Rasa, the group home also uses a daily log to track medications  
17 administered, but this daily log is not saved, and Plaintiff's  
18 has been destroyed. Davis Decl. Ex. A, Mandery Dep. 44-46.

19 In her June 18, 2002 report, Ms. Steenberg recommended that  
20 Plaintiff be evaluated for depression, based in part on his own  
21 self-reporting of chronic and episodic depression, including  
22 weight loss, suicidal ideation, and social impairment. Id., Ex.  
23 3, at D-88. Based on Ms. Steenberg's recommendation, Officer

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24  
25 <sup>2</sup>Plaintiff objects to the Appraisal, Needs and Services Plan  
26 and the Quarterly Reports on the grounds of hearsay.  
27 Plaintiff's objections are overruled as moot; the Court does not  
28 rely on these documents for truths about Plaintiff's condition,  
but as evidence of Officer Rogers' record-keeping and the  
parties' understanding at the time.

1 Rogers obtained a referral for Plaintiff be evaluated by a  
2 psychiatrist. However, Officer Rogers testified at her  
3 deposition that she would have referred Plaintiff to a  
4 psychiatrist, even if the Tabula Rasa staff had not recommended  
5 that she do so, because she is "not an expert when it comes to  
6 mental health issues." Rogers Dep. 26:4-12.

7 Dr. Sukhmani Kaur Gill, a psychiatrist at Pathways to  
8 Wellness, a clinic with a contract with the County, examined  
9 Plaintiff in August, 2002 and diagnosed him with major  
10 depressive disorder, dysthymic disorder and anxiety disorder.  
11 She prescribed the anti-depressant drug Paxil.<sup>3</sup> This medication  
12 was not approved for pediatric use. On September 13, 2002, the  
13 Alameda County Juvenile court granted an ex parte request by  
14 Officer Rogers to allow Plaintiff to take Paxil in dosages of up  
15 to 40 milligrams. Officer Rogers was aware that Paxil was not  
16 approved for pediatric use, but was not concerned because she  
17 knew that not every medication taken by children had been tested  
18 and approved for them, and she deferred to the judgment of the  
19 treating psychiatrist. Rogers Dep. 37:6-20, 39:1-15. According  
20 to Officer Rogers' request to the court, Plaintiff's last  
21 attorney of record was not contacted because she no longer  
22 handled juvenile matters, but Plaintiff's mother, Cynthia  
23 Ramirez, "was most definitely in agreement with the

24 \_\_\_\_\_  
25 <sup>3</sup>Plaintiff filed his complaint against Dr. Gill as well.  
26 However, he did not oppose Dr. Gill's motion to dismiss the  
27 claims against her for failure to state a claim and lack of  
subject matter jurisdiction. The Court granted that motion on  
February 2, 2005.

1 prescription," had "noticed that his behavior was extremely  
2 manic," and was "fearful that he would commit suicide." Ms.  
3 Ramirez now states that had she been informed that Paxil was not  
4 recommended for pediatric use, she would not have supported the  
5 ex parte request, and would have taken efforts to have an  
6 attorney appointed for her son. Ramirez Decl. ¶¶ 2-3.

7 On October 7, 2002, Dr. Gill or another psychiatrist at  
8 Pathways to Wellness reissued Plaintiff a prescription for Paxil  
9 in 10 milligram dosages. On November 1, 2002, the dosage was  
10 increased to 20 milligrams, a prescription which was reissued  
11 following evaluations performed on December 6, 2002, January 10,  
12 2003 and February 6, 2003. Ms. Steenberg's November 11, 2002  
13 report noted,

14 Monitoring and follow-up appointments will occur to ensure  
15 the medications [sic] effectiveness. Also long-term  
16 psychoanalytic therapy is concurrently the treatment  
17 modality for his depressive symptoms. . . .

18 Over the last three weeks, Jeff's highs (manic  
19 symptoms) and lows (depressive symptoms) appear to be less  
20 intrusive. His affect appears to be more age appropriate  
21 and his social timing less intrusive and less  
22 inappropriate. These recent changes can presumably be  
23 attributed to the psychotropic medication.

24 Nov. 11, 2002 Report at D-83, D-85.

25 On February 18, 2003, Plaintiff disclosed to Ms. Steenberg  
26 that he had devised a method for attempting suicide. As part of  
27 her response, Plaintiff and Tabula Rasa staff wrote a "no-  
28 suicide plan" in which he committed "to not harm himself and to  
immediately inform any staff on duty whenever he ha[d] such  
thoughts." Rogers Decl., Ex. 8, February 18, 2003 Tabula Rasa  
Incident Report. Tabula Rasa expert witness Dr. James R.

1 Missett describes a no-suicide plan or contract as "a therapy  
2 tool widely used in the psychiatric community to enlist the  
3 assistance of the patient into the treatment protocol." Missett  
4 Decl. ¶ 10. Plaintiff was reportedly placed on "one-on-one  
5 supervision." Incident Report at D-76.

6 Officer Rogers was informed of Plaintiff's suicidal  
7 ideation and the no-suicide plan. She testified that this was  
8 something that should have been brought to the attention of her  
9 supervisors; however, she does not recall having any  
10 conversations with anyone at her office about the incident  
11 report. Rogers Dep. 55:13-18.

12 In her March 3, 2003 report, Ms. Steenberg noted that  
13 Plaintiff's depressive and manic symptoms had increased that  
14 quarter; she attributed this to an "increased sensitivity to  
15 rejection and self-loathing" due to his disclosure in therapy of  
16 his own past sexual abuse. Mar. 3, 2003 Quarterly Report at D-  
17 72. Also on March 3, 2003, Plaintiff's prescription dosage was  
18 increased to 30 milligrams and remained elevated after an April  
19 10, 2003 evaluation. In addition to the medication, Tabula Rasa  
20 placed Plaintiff

21 on a special program to elevate his depressed mood. He is  
22 to do physical activity two times a day along with using  
23 positive self-talk to combat his defeatist and self-  
24 loathing attitudes. He is also to talk to staff  
immediately when he is feeling depressed or having suicidal  
thoughts. He is on close supervision to further maintain  
his safety.

25 Mar. 3, 2003 Quarterly Report at D-73.

26 On the evening of May 7, 2003, Plaintiff was in his room,  
27 "crying, upset and depressed." Buchanan Dep. 80:5-6. His

1 roommate found him and informed Anthony Page, a Tabula Rasa  
2 employee. Plaintiff informed Mr. Page that he wanted to kill  
3 himself; Mr. Page successfully got Plaintiff to calm down "a  
4 little bit," and then told him to go back to bed. Id. 82:1-11.

5 The next day, Plaintiff was woken up by Tabula Rasa staff  
6 between 6:30 and 7:00, ate breakfast, and left for his  
7 continuation school. Although Plaintiff was seen at school, he  
8 did not go to class, and instead walked into an oncoming traffic  
9 lane of United States Highway 50. Plaintiff was struck by a  
10 vehicle and sustained significant bodily injuries. Tabula Rasa  
11 executive Michelle Mandrey informed Officer Rogers of  
12 Plaintiff's suicide attempt that day. Tabula Rasa employees  
13 later discovered multiple suicide notes written by Plaintiff.

14 Tabula Rasa's expert, Dr. Missett, has reviewed the  
15 relevant documents in this case. He opines that the County's  
16 placement of Plaintiff at Tabula Rasa was appropriate; that  
17 Tabula Rasa's provision of Paxil to Plaintiff was in accordance  
18 with the recommendation of his treating psychiatrists and the  
19 State court's order and within the applicable standard of care;  
20 that Tabula Rasa staff at all times provided Plaintiff with the  
21 care and treatment that was reasonable and appropriate and  
22 within the applicable standard of care for a group home; and  
23 that no act or omission by Tabula Rasa staff was a substantial  
24 factor in causing Plaintiff's injuries.<sup>4</sup> ¶¶ 5, 9, 13-17.

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25  
26 <sup>4</sup>Plaintiff objects to Dr. Missett's Declaration on the  
27 grounds that he failed to review Plaintiff's psychiatric  
28 records; he relies on hearsay comments contained within Ms.  
Steenberg's Quarterly Reports; and his opinion relies on an



1 In its December 6, 2004 Order Granting in Part and Denying  
2 in Part Defendant Tabula Rasa's Motion to Dismiss, the Court  
3 dismissed Plaintiff's claim for negligence against Tabula Rasa  
4 on the grounds that it was immune from liability under  
5 California Government Code § 845.8. Plaintiff pursues claims  
6 against Tabula Rasa under 42 U.S.C. § 1983 for violation of his  
7 constitutional rights, including violation of his right to  
8 personal security under the Fifth Amendment; deliberate  
9 indifference to his medical needs in violation of the Eight  
10 Amendment; and failure to provide medical care in violation of  
11 the Fourteenth Amendment. Plaintiff also brings a State law  
12 claim for battery against Tabula Rasa. In addition, Plaintiff  
13 brings a claim against the County for the maintenance of  
14 policies or customs exhibiting a deliberate indifference to the  
15 constitutional rights of a person with whom it had a special  
16 relationship. Plaintiff has dismissed his previous claims  
17 against Dr. Gill, and does not oppose dismissal of his claims  
18 against Mr. Tucker.

19 LEGAL STANDARD

20 Summary judgment is properly granted when no genuine and

21 \_\_\_\_\_  
22 "incomplete (and possibly erroneous) set of facts."

23 Plaintiff's objections are overruled. Dr. Missett clearly  
24 states that he reviewed Plaintiff's "medical records" and "all  
25 documents produced by Plaintiff," and in a supplemental  
26 declaration he states that, assuming all of the additional facts  
27 identified by Plaintiff are true, his opinions would remain the  
28 same. Under Federal Rule of Evidence 703, Dr. Missett may rely  
for his opinion on otherwise inadmissible facts or data.  
Plaintiff makes no claim that Ms. Steenberg's Quarterly Reports  
are not of the type reasonably relied upon by experts in the  
field, nor does Plaintiff suggest that Ms. Steenberg's Reports  
would not generally be admissible if properly authenticated.

1 disputed issues of material fact remain, and when, viewing the  
2 evidence most favorably to the non-moving party, the movant is  
3 clearly entitled to prevail as a matter of law. Fed. R. Civ. P.  
4 56; Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986);  
5 Eisenberg v. Ins. Co. of N. Am., 815 F.2d 1285, 1288-89 (9th  
6 Cir. 1987).

7 The moving party bears the burden of showing that there is  
8 no material factual dispute. Therefore, the court must regard  
9 as true the opposing party's evidence, if supported by  
10 affidavits or other evidentiary material. Celotex, 477 U.S. at  
11 324; Eisenberg, 815 F.2d at 1289. The court must draw all  
12 reasonable inferences in favor of the party against whom summary  
13 judgment is sought. Matsushita Elec. Indus. Co. v. Zenith Radio  
14 Corp., 475 U.S. 574, 587 (1986); Intel Corp. v. Hartford  
15 Accident & Indem. Co., 952 F.2d 1551, 1558 (9th Cir. 1991).

16 Material facts which would preclude entry of summary  
17 judgment are those which, under applicable substantive law, may  
18 affect the outcome of the case. The substantive law will  
19 identify which facts are material. Anderson v. Liberty Lobby,  
20 Inc., 477 U.S. 242, 248 (1986).

21 Where the moving party does not bear the burden of proof on  
22 an issue at trial, the moving party may discharge its burden of  
23 showing that no genuine issue of material fact remains by  
24 demonstrating that "there is an absence of evidence to support  
25 the nonmoving party's case." Celotex, 477 U.S. at 325. The  
26 moving party is not required to produce evidence showing the  
27 absence of a material fact on such issues, nor must the moving  
28

1 party support its motion with evidence negating the non-moving  
2 party's claim. Id.; see also Lujan v. Nat'l Wildlife Fed'n, 497  
3 U.S. 871, 885 (1990); Bhan v. NME Hosps., Inc., 929 F.2d 1404,  
4 1409 (9th Cir. 1991), cert. denied, 502 U.S. 994 (1991). If the  
5 moving party shows an absence of evidence to support the non-  
6 moving party's case, the burden then shifts to the opposing  
7 party to produce "specific evidence, through affidavits or  
8 admissible discovery material, to show that the dispute exists."  
9 Bhan, 929 F.2d at 1409. A complete failure of proof concerning  
10 an essential element of the non-moving party's case necessarily  
11 renders all other facts immaterial. Celotex, 477 U.S. at 323.

#### 12 DISCUSSION

##### 13 I. Constitutional Claims Against Tabula Rasa

14 Tabula Rasa moves for summary adjudication of Plaintiff's  
15 constitutional claims against it on the grounds inter alia that  
16 there is an absence of evidence to support Plaintiff's  
17 contention Tabula Rasa acted with deliberate indifference.

18 Both parties agree that the standard of "deliberate  
19 indifference" applies to all of Plaintiff's constitutional  
20 claims under 42 U.S.C. § 1983. See, e.g., Daniels v. Williams,  
21 474 U.S. 327, 330 (1986) (holding that due process clause not  
22 implicated by negligent State act causing unintended loss of  
23 life).

24 It is not clear what Plaintiff believes constitutes  
25 evidence of Tabula Rasa's deliberate indifference to him. In  
26 his opposition, Plaintiff suggests that the issue is "whether it  
27 knew of Plaintiff's suicidal tendencies." Am. Opp. at 14. The

1 record clearly shows that Tabula Rasa staff were indeed aware of  
2 Plaintiff's suicidal tendencies, and that they took what they  
3 believed to be appropriate steps in response. As part of that  
4 response, they administered to Plaintiff the medication that was  
5 prescribed by his treating psychiatrists, who evaluated him  
6 monthly. This medication was also approved by the State court.  
7 Plaintiff has failed to produce evidence sufficient to raise a  
8 triable issue of material fact regarding Tabula Rasa's  
9 deliberate indifference to him. Indeed, Plaintiff has failed to  
10 rebut Dr. Missett's expert opinion that Tabula Rasa was not  
11 negligent.

12 Plaintiff accuses Tabula Rasa of deliberate spoliation of  
13 the evidence, based on its failure to keep Plaintiff's daily  
14 medication logs. Plaintiff claims that this creates an adverse  
15 inference that Tabula Rasa was in fact deliberately indifferent  
16 to his medical needs. As the Ninth Circuit explained in Akiona  
17 v. United States, courts may draw adverse inferences from the  
18 destruction of evidence relevant to a case,

19 based on two rationales, one evidentiary and one not. The  
20 evidentiary rationale is nothing more than the common sense  
21 observation that a party who has notice that a document is  
22 relevant to litigation and who proceeds to destroy the  
document is more likely to have been threatened by the  
document than is a party in the same position who does not  
destroy the document. . . .

23 The other rationale for the inference has to do with  
24 its prophylactic and punitive effects. Allowing the trier  
of fact to draw the inference presumably deters parties  
from destroying relevant evidence before it can be  
introduced at trial.

25 938 F.2d 158, 161 (1991). Here, however, these rationales are  
26 inapplicable and insufficient. Nothing in the record shows that  
27

1 Tabula Rasa destroyed Plaintiff's records in response to this  
2 litigation. Furthermore, Plaintiff's primary theory is that  
3 Tabula Rasa's administration of Paxil caused him harm. The  
4 Court will infer, in the absence of the daily medical logs, that  
5 Tabula Rasa did indeed administer Paxil to Plaintiff, but this  
6 fact, in itself, does not constitute evidence of deliberate  
7 indifference.

8 Therefore, the Court grants Tabula Rasa's motion for  
9 summary adjudication of Plaintiff's federal constitutional  
10 claims against it. It need not reach Tabula Rasa's arguments  
11 that these claims are prohibited because it is not a State  
12 actor, or, in the alternative, that the claims are prohibited  
13 under Monell v. Dep't of Soc. Serv., 43 U.S. 658, 694 (1978) and  
14 that Tabula Rasa is entitled to qualified immunity.

## 15 II. Battery Claim

16 Tabula Rasa moves for summary adjudication of Plaintiff's  
17 State law claim against it for battery, on the grounds that it  
18 is unsupported by the evidence. Title 28 U.S.C. § 1367(c)(3)  
19 authorizes a federal district court to exercise supplemental  
20 jurisdiction over State law claims even after it has dismissed  
21 all claims over which it has original jurisdiction.

22 In order to establish this claim, Plaintiff must show  
23 evidence sufficient to raise a triable issue of material fact  
24 regarding the elements of battery. A California Court of Appeal  
25 set forth those elements in the context of medical treatment as  
26 follows,

27 A battery is any intentional, unlawful and harmful contact  
28

1 by one person with the person of another. A harmful  
2 contact, intentionally done is the essence of a battery. A  
3 contact is "unlawful" if it is unconsented to. The  
4 elements of a civil battery are: 1. Defendant  
5 intentionally did an act which resulted in a harmful or  
6 offensive contact with the plaintiff's person; 2. Plaintiff  
7 did not consent to the contact; and 3. The harmful or  
8 offensive contact caused injury, damage, loss or harm to  
9 the plaintiff.

10 Piedra v. Dugan, 123 Cal. App. 4th 1483, 1495 (2004) (internal  
11 quotation marks, ellipses and citations omitted).

12 In Piedra, which also involved allegedly harmful medical  
13 treatment to a minor, it was the parents' consent to treatment  
14 that was in dispute. For wards of the court, however,  
15 California law provides that "only a juvenile court judicial  
16 officer shall have authority to make orders regarding the  
17 administration of psychotropic medications for that child."  
18 Cal. Welf. & Inst. Code § 369.5(a). Tabula Rasa argues that the  
19 administration of Paxil to Plaintiff was not "unlawful" because  
20 it was duly authorized by the Alameda County Superior Court's  
21 September 13, 2002 Order.

22 Plaintiff counters that the order is void because, as  
23 stated on its face, it was issued ex parte without contacting an  
24 attorney for Plaintiff. Yet Plaintiff cites no legal authority  
25 that supports this position. Indeed, § 369.5(a) requires only  
26 that an order regarding administration of psychotropic  
27 medication be based on "a request from a physician, indicating  
28 the reasons for the request, a description of the child's  
29 diagnosis and behavior, the expected results of the medication,  
30 and a description of any side effects of the medication."  
31 Plaintiff does not dispute that these requirements were met.

1 The legal authority cited by Plaintiff is inapposite and does  
2 not suggest that the order was invalid simply because it was  
3 issued ex parte. See Becker v. S.P.V. Construction, 27 Cal. 3d  
4 489, 493-496 (1980) (reversing a trial court order vacating  
5 default judgment in construction contract case); Burtnett v.  
6 King, 33 Cal. 2d 805, 807-808 (1949) (setting forth California  
7 law requirements for default judgment). There is no evidence  
8 that Tabula Rasa was aware that the order had been issued  
9 without contacting a lawyer, or that that was improper, if it  
10 was.

11 In light of the State court order authorizing the  
12 administration of Paxil in dosages of up to 40 milligrams,  
13 Tabula Rasa's dispensation of the medicine to Plaintiff cannot  
14 be the kind of "intentional, unlawful and harmful contact" that  
15 constitutes battery. Therefore, the Court grants Tabula Rasa's  
16 motion for summary adjudication of the battery claim.

17 III. Monell Claim Against County

18 The County moves for summary adjudication of Plaintiff's  
19 claim, pursuant to Monell, that it violated 42 U.S.C. § 1983 by  
20 developing and maintaining policies or customs exhibiting a  
21 deliberate indifference to the constitutional rights of persons  
22 with whom it had a special relationship, including Plaintiff.

23 "To impose liability on a government entity for failing to ac  
24 preserve constitutional rights, a section 1983 plaintiff must  
25 establish: (1) that he possessed a constitutional right of which h  
26 deprived; (2) that the municipality had a policy; (3) that this po  
27 'amounts to deliberate indifference' to the plaintiff's constituti

1 right; and (4) that the policy is the 'moving force behind the  
2 constitutional violation.'" Oviatt v. Pearce, 954 F.2d 1470, 1474  
3 Cir. 1992) (citing City of Canton, 489 U.S. 378, 389-91 (1989)).  
4 the liability of municipalities does not depend upon the liability  
5 individual officers, it is contingent on a violation of constitution  
6 rights. Scott v. Henrich, 39 F.3d 912, 916 (9th Cir. 1994), cert.  
7 denied, 515 U.S. 1159 (1995). At the hearing, Plaintiff identifies  
8 Officer Rogers as the individual who violated his constitutional  
9 rights.

10 Plaintiff identifies as "the crux" of his claim against the County  
11 an alleged violation of his rights under the Eighth Amendment because  
12 he was "confined under conditions posing a risk of 'objectively,  
13 sufficiently serious' harm and that the officials had a 'sufficiently  
14 culpable state of mind' in denying the proper medical care." Clemens  
15 v. Gomez, 298 F.3d 898, 904 (9th Cir. 2002) (quoting Wallis v. Bal  
16 70 F.3d 1074, 1076 (9th Cir. 1995)). However, Plaintiff does not  
17 specifically identify any evidence showing that he was confined under  
18 conditions posing a risk of objectively, sufficiently serious harm.  
19 Even assuming arguendo that the Paxil prescription was a "condition  
20 posing a risk of such harm, Plaintiff offers no evidence to suggest  
21 that Officer Rogers or any other County employee had a "sufficiently  
22 culpable state of mind" in creating this condition.

23 Plaintiff notes numerous alleged discrepancies or gaps in  
24 the record which he implies indicate deficiencies in Officer  
25 Rogers' supervision, e.g., her failure to recall whether she  
26 brought the February 18, 2003 incident report to the attention  
27 of her Probation Department supervisors. However, Plaintiff  
28



1 never explains how these alleged deficiencies support his claim  
2 that the County confined him under conditions of sufficiently  
3 serious harm or that doing so amounted to deliberate  
4 indifference to his rights. The record before the Court shows only  
5 that Officer Rogers relied on Tabula Rasa and Plaintiff's treating  
6 psychiatrists in order to determine what course of treatment was in  
7 best interest. Despite Plaintiff's suffering, there is no  
8 evidence that Officer Rogers' trust was misplaced or  
9 inappropriate, much less that it represented a policy of  
10 deliberate indifference to Plaintiff's constitutional rights.

11 Therefore, the Court grants the County's motion for summary  
12 adjudication of the Monell claim against it.

13 CONCLUSION

14 For the foregoing reasons, the Court GRANTS Defendants  
15 Tabula Rasa and the County's motions for summary judgment  
16 (Docket Nos. 71 and 60, respectively). Tabula Rasa's request  
17 for judicial notice is GRANTED (Docket No. 73). Plaintiff's  
18 claims against Wayne Tucker are dismissed with prejudice.

19 The Clerk shall enter judgment accordingly. Each party  
20 shall bear its own costs of the action.

21  
22 IT IS SO ORDERED.

23  
24 Dated: 7/21/05

25 /s/ CLAUDIA WILKEN  
26 CLAUDIA WILKEN  
27 United States District Judge  
28